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January 10, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington D.C. 20554

RE: Notice of Ex Parte Communication, WC Docket Nos. 10-90,  
14-58 and 14-259

Dear Secretary Dortch:

On January 6, 2017, the undersigned, along with Jeffrey S. Nordhaus, Executive Vice President – Innovation & Broadband, Empire State Development, and Charles Small, Associate Director of Federal Affairs of the Washington D.C. Office of Governor Andrew Cuomo of New York, held a conference call with Amy Bender, legal advisor to Commissioner Michael O’Rielly. The purpose of the call was to discuss New York’s Petition for Expedited Waiver, which is currently pending in the above-captioned proceedings.

During the call, the State representatives noted that grant of the waiver would coordinate the expenditure and use of federal and State broadband funding in New York. This coordination would allow winning carriers in New York’s reverse auction to use CAF funding to provide the FCC-mandated minimum broadband performance tier of at least 10 Mbps downstream and 1 Mbps upstream. These carriers would dedicate the New York broadband funding to turbocharge their networks to meet the even higher State-mandated speeds. By coordinating the State and federal programs in this manner, Mr. Nordhaus maintained that the waiver would facilitate the rapid deployment of ultra-fast broadband networks in rural areas with no additional CAF funding. In fact, the waiver likely would decrease the total

federal CAF funding allocated to New York. The CAF funding made available to New York carriers through the waiver would be approximately 45% less than the nearly \$300 million the FCC has set as the reserve prices for all auction-eligible territories in the State in the CAF auction.

In addition, the \$170 million sought under the waiver is the amount the FCC previously determined to be appropriate for deploying a 10/1 broadband network in New York. The State representatives stated that this amount thus can be reasonably viewed as a proxy for the minimum service that should be supported by the FCC, which the State should be able to supplement with its own funding. Mr. Nordhaus also confirmed that New York would at least match or exceed CAF funding made available to ensure that State broadband funding exceeds the federal funding allocated pursuant to the waiver. Mr. Small further argued that these potential savings, the inherent wastefulness of two separate uncoordinated auctions, and the vastly superior speeds and deployment timelines required under New York's program are overwhelmingly in the public interest and warrant grant of the waiver.

In addition, the New York representatives stated that the waiver is the only available solution to resolving the timing and funding challenges presented by the overlapping State and federal auction processes. Mr. Nordhaus indicated that while New York would be willing to consider employing the FCC's current draft rules for the State and federal joint reverse auction, including those governing auction weights, the extended delay in issuing final auction rules precludes their application in New York. The State clearly cannot adopt its own auction weights because they would invariably conflict with any rules subsequently adopted by the Commission. Imposing these rules at this late juncture would cause a substantial shift to the New York process that would introduce confusion and uncertainty into an otherwise robust multi-stage auction that New York is running successfully—with the majority of its own State funding.

The parties also discussed whether New York could delay phase three of its auction until after the FCC concludes its CAF auction. Mr. Nordhaus noted that the State already has delayed auctioning these affected communities for almost one year while it diligently discussed various alternatives with Commission staff. Further delays are unworkable given the uncertain timeline of the FCC's auction and the State's buildout deadlines, which require winning carriers to substantially complete their deployments by the end of 2018. To impose further delays, or indeed to render impossible this most promising opportunity simply because the FCC has not yet determined the structure of its auction and cannot point to a clear timeline for doing so, is not only contrary to the public interest but plainly unfair to the New York residents in desperate need of high quality broadband in their communities.

Finally, the State representatives confirmed that phase three of New York's reverse auction will be technologically neutral and open to wireline, fixed wireless, and satellite broadband providers. Mr. Nordhaus indicated that the State would consider adjusting the procedures governing its auction, but only if necessary to secure Commission grant of the waiver and so long as any adjustments remain consistent with the goals of New York's broadband program. While all technologies already are eligible to bid simultaneously in the auction, the State could consider including additional language in its auction rules to further clarify technological neutrality assuming the targeted speed goals of New York's program are achieved. Once the FCC finalizes its own rules, the State would also be more than willing to discuss how to incorporate those rules into any subsequent joint auction utilizing federal and State funding.

New York has great respect for the Commission's goals in devising auction rules geared toward achieving universal broadband and the constraints it faces in crafting such rules. In doing so, New York hopes the FCC will partner with the State to achieve its goals of deploying broadband networks that are better, faster, and cheaper than those available under the CAF program.

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

John M. Beahn

*Counsel to Empire State Development*